
ENGROSSED SENATE BILL 5254

State of Washington

58th Legislature

2003 Regular Session

By Senators Roach, Hale, Stevens, T. Sheldon, Mulliken, Hewitt, Parlette, Horn, Rossi, Benton, Schmidt, Johnson and Esser

Read first time 01/20/2003. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to the burden of proof in actions asserting
2 invalidity of agency rules; and amending RCW 34.05.570.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to
5 read as follows:

6 (1) Generally. Except to the extent that this chapter or another
7 statute provides otherwise:

8 (a) The burden of demonstrating the invalidity of agency action is
9 on the party asserting invalidity;

10 (b) The validity of agency action shall be determined in accordance
11 with the standards of review provided in this section, as applied to
12 the agency action at the time it was taken;

13 (c) The court shall make a separate and distinct ruling on each
14 material issue on which the court's decision is based; and

15 (d) The court shall grant relief only if it determines that a
16 person seeking judicial relief has been substantially prejudiced by the
17 action complained of.

1 (2) Review of rules. (a) A rule may be reviewed by petition for
2 declaratory judgment filed pursuant to this subsection or in the
3 context of any other review proceeding under this section. In an
4 action challenging the validity of a rule, the agency shall be made a
5 party to the proceeding.

6 (b) The validity of any rule may be determined upon petition for a
7 declaratory judgment addressed to the superior court of (i) Thurston
8 county, (ii) the county of the petitioner's residence or principal
9 place of business, or (iii) in a county where property owned by the
10 petitioner and affected by the contested rule is located, when it
11 appears that the rule, or its threatened application, interferes with
12 or impairs or immediately threatens to interfere with or impair the
13 legal rights or privileges of the petitioner. The declaratory judgment
14 order may be entered whether or not the petitioner has first requested
15 the agency to pass upon the validity of the rule in question.

16 (c) In a proceeding involving review of a rule, the court shall
17 declare the rule invalid only if it finds that: The rule violates
18 constitutional provisions; the rule exceeds the statutory authority of
19 the agency; the rule was adopted without compliance with statutory
20 rule-making procedures; or the rule is arbitrary and capricious.

21 (d) If the legislature appropriates funds for distribution to
22 counties as reimbursement for the cost of hearing a petition for a
23 declaratory judgment under (b) of this subsection, the total
24 distribution shall reflect the relative caseload among the counties
25 where such petitions are filed.

26 (3) Review of agency orders in adjudicative proceedings. The court
27 shall grant relief from an agency order in an adjudicative proceeding
28 only if it determines that:

29 (a) The order, or the statute or rule on which the order is based,
30 is in violation of constitutional provisions on its face or as applied;

31 (b) The order is outside the statutory authority or jurisdiction of
32 the agency conferred by any provision of law;

33 (c) The agency has engaged in unlawful procedure or decision-making
34 process, or has failed to follow a prescribed procedure;

35 (d) The agency has erroneously interpreted or applied the law;

36 (e) The order is not supported by evidence that is substantial when
37 viewed in light of the whole record before the court, which includes

1 the agency record for judicial review, supplemented by any additional
2 evidence received by the court under this chapter;

3 (f) The agency has not decided all issues requiring resolution by
4 the agency;

5 (g) A motion for disqualification under RCW 34.05.425 or 34.12.050
6 was made and was improperly denied or, if no motion was made, facts are
7 shown to support the grant of such a motion that were not known and
8 were not reasonably discoverable by the challenging party at the
9 appropriate time for making such a motion;

10 (h) The order is inconsistent with a rule of the agency unless the
11 agency explains the inconsistency by stating facts and reasons to
12 demonstrate a rational basis for inconsistency; or

13 (i) The order is arbitrary or capricious.

14 (4) Review of other agency action.

15 (a) All agency action not reviewable under subsection (2) or (3) of
16 this section shall be reviewed under this subsection.

17 (b) A person whose rights are violated by an agency's failure to
18 perform a duty that is required by law to be performed may file a
19 petition for review pursuant to RCW 34.05.514, seeking an order
20 pursuant to this subsection requiring performance. Within twenty days
21 after service of the petition for review, the agency shall file and
22 serve an answer to the petition, made in the same manner as an answer
23 to a complaint in a civil action. The court may hear evidence,
24 pursuant to RCW 34.05.562, on material issues of fact raised by the
25 petition and answer.

26 (c) Relief for persons aggrieved by the performance of an agency
27 action, including the exercise of discretion, or an action under (b) of
28 this subsection can be granted only if the court determines that the
29 action is:

30 (i) Unconstitutional;

31 (ii) Outside the statutory authority of the agency or the authority
32 conferred by a provision of law;

33 (iii) Arbitrary or capricious; or

34 (iv) Taken by persons who were not properly constituted as agency
35 officials lawfully entitled to take such action.

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